CASES

ARGUED AND DETERMINED

IN THE

SUPREME COURT

OF THE

STATE OF LOUISIANA.

WESTERN DISTRICT, AUGUST TERM, 1824.

THE STATE
vs.
BELL.

THE STATE vs. *BELL.*

Procuring the means of producing an abortion is a breach of good behaviour, for which a clerk may be removed from his office.

MARTIN, J. delivered the opinion of the court. The defendant, clerk of the district court, for the parish of St, Landry, is before us, on a rule to shew cause why he should not be dismissed from office, for a breach of good behaviour, in procuring the means of producing an abortion.

The rule was issued, on the production of his own deposition, that of a physician he applied to for, and who furnished, those means, and that of a coloured woman, who received from the defendant, and carried to the deluded

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female, an instrument, by the use of which her premature delivery was to be obtained. These depositions were taken, under the inspection of the attorney, who prosecutes for the state in the district, as the basis of a prosecution, against the parents, for an incest; they being related in a very near degree.

The defendant has denied the charge. The doctor's deposition has been read, on the hearing, with the consent of the defendant's counsel. The colored woman was examined in open court, and the attorney for the state has permitted the defendant's own deposition to be read.

The doctor deposed that, being applied to by the defendant to furnish or indicate the means of producing the abortion, he at first declined; but afterwards said that, on being paid, he would indicate the means. The defendant replied, this would do, as the coloured woman would be employed to put them in use and the father and mother would gladly pay any sum for her instant relief. The defendant pressed for an immediate disclosure of the means; but the doctor declined gratifying him, unless he was previously paid. The inability of the parties for the present was urged,

as well in their readiness to give a note, and their ability to take it up, when they sold their beeves. On this, the sum of seven thousand dollars was mentioned, by the doctor, as the compensation he should expect. After some observations on the magnitude of the claim, the defendant promised to procure a note for as large a sum as he could, and a few days after produced one he had prepared, for four thousand dollars, but not yet signed, which was objected to on account of the smallness of the sum. The defendant offered his own note, which was also refused.—On his observing that the father was gone to the Attakapas, the doctor said the mother could give her own note. The defendant replied, no light could be made in the house, after the colored woman got access to her, and he urged that every reliance could be had in the family. The doctor declared his determination to decline acting, unless he received a note. The defendant said he would not do any thing in the matter, and would wash his hands of it. The doctor answered he would do well, for the person who would procure the abortion would commit murder.

On another day, the defendant told the doc-

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tor, the mother had threatened to destroy herself, unless she was immediately relieved; he repeated that great confidence might be placed in the family, and again tendered his own note. The doctor, declining to accept it, urged the necessity of his having, besides a good note, a sum of five hundred dollars in cash, in case the matter was discovered. He was answered, this could be had, but that, in case of a discovery, the defendant alone should suffer, and not he, whose name should be kept secret. On the following day, the defendant shewed him the father's letter and note for five thousand dollars, pressed him no longer to disappoint his hopes, and added the mother threatened to destroy herself by jumping into the well. The doctor said he would try to get something to prevent that. He never had the note in his possession; he believes it was payable to the defendant. In the evening, being again urged, he said he would procure something, if not to produce the abortion, at least to prevent the woman killing herself. Before supper, he handed an instrument to the defendant, giving him directions, as to the manner, in which it was to be used, apprising him of the danger there was of the mother be-

ing killed with it; mentioned his apprehension of the coloured woman being discovered with it, or of her leaving it behind. After supper, he pressed the defendant, not to suffer the colored woman to use the instrument, as there was great danger of her killing the mother. The colored woman was then in the defendant's back room, and he assured him she should not, as he had apprised her of the danger.

The colored woman deposed she was sent for by the young woman, who mentioned her situation, and her determination of destroying herself by jumping into the well, or in some other way. The deponent endeavoured to dissuade her, and she mentioned the matter to the defendant, who observed it was unfortunate that some friend of the family did not mention the matter to her mother, and being pressed to do so, replied he was not sufficiently acquainted with the family. On this, the deponent took it upon herself to mention his name to the young person, as that of a man disposed to befriend her. She was desired, if she thought him really so disposed, to tell him, that she (the young person) threw herself on his mercy. On receiving this message,

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he expressed his displeasure at the mention of his name—asked what was meant by the expression "throwing herself on his mercy," and declared that, if the destruction of the child was intended, he would not have any thing to do with it, for all the family possessed. The young person, being pressed to express her intention, said her brother had seen in a book, that there were means of procuring an abortion, and she wished the aid of a physician for this purpose. This being repeated to the defendant, he repeated his asseveration, that he would not have any thing to do with it: but being assured of the determination of the young person to destroy herself, or the child, he said the best thing that could be done was to procure something from a doctor, (no matter what) that might prevent her resort to dangerous means; and the deponent assured her, the defendant would see whether any thing could be done for her relief; but, it was well understood between the defendant and the deponent that nothing, that could destroy the child, would be given.

The defendant soon after, informed the deponent, he had procured a doctor, whose name, though often pressed, he refused to disclose, adding that he and the doctor were determi-

ned that nothing should be given that could destroy the child. The doctor would only give some trifle. He informed her the doctor demanded twenty thousand dollars; observing he made this high demand, not wishing to give any thing. Two or three days after, he mentioned the doctor had reduced his demand to ten thousand dollars—she replied his asking so much, was a proof that his intentions were bad; but the defendant replied the doctor would not give any thing that might destroy the child.

The next night, towards twelve, the father came to the deponent for the thing the doctor had promised. She begged him to tell the young person, the best thing she could do, was to apprize her mother of her situation—that the old lady was the best doctor she could resort to. He replied this could not be done, and he was ready to purchase relief, at the expense of every thing he possessed. She then informed him of the doctor's demand, and he said he would give him five thousand dollars. This was communicated to the defendant, who said he had no objection to it; but he would have nothing to do with the destruction of the child. A few days after, he told

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her the doctor would not do any thing, until he had a *note* for five thousand dollars—the defendant accordingly wrote one, and the deponent got it signed and brought it back.

The next day, she inquired from the defendant, what the doctor meant to give. He told her she must not use it, and on her repeating the inquiry, he declared he would neither tell, nor shew it to her, unless she promised not to suffer herself, by any means, to be prevailed on, to use it. She asked whether it was a potion, and was answered it was an instrument. It was now produced and put into her hands. The charge, not to use it herself, was repeated, and she was directed to tell the young person not to employ it—apprising her of the danger, with which the use of it would be attended. He requested that she might be advised to inform her mother of her situation, and if she determined on doing so, he requested that she might be informed he would prepare the draft of a letter for this purpose, which she might copy and hand to her mother, or leave it, where she could find it. On her going to the young person with the instrument, the defendant communicated to the deponent, the instructions the doctor had given him, as to the manner of using it.

The account given by the defendant, in his own deposition, is as follows:

On communicating to the doctor, a letter from the father of the child, in which it was mentioned that "*if any thing could be procured from a doctor*, or if the young woman could be delivered, without the knowledge of her mother, all would yet go well," the defendant asked whether something could not be *given*, something *done*, to assist them—some kind of medicine, no matter how simple, giving it a high sounding name, to content, give time and get them off. The doctor, at first declined doing any thing: but promised to think about it. The next day, he expressed his readiness to assist, urged the danger he should place himself in, and his determination not to do any thing, unless he was well paid. Pressed to state the sum he should expect, he said twenty thousand dollars; he, however reduced his pretensions to ten, then eight thousand, to be secured by a note of the father. This being communicated to the latter, he expressed his determination to sacrifice all his property, and finally offered a note for four thousand dollars. The doctor objected to the smallness of the sum, the defendant sent one of five thousand

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dollars, for the father's signature, observing that, on its being returned signed, *the things would be furnished*, and would take effect, *if not immediately, at least within twenty-four hours.* On the return of the note, duly signed, the doctor handed to the defendant, *an elastic catheter*, directing him how it was to be managed, and warning him of the danger attending its use. The defendant, on the same night, handed the instrument to the coloured woman, with the directions and caution, with which the doctor had accompanied it, required her promise not to use it, and on receiving it handed the instrument to her. While the defendant was giving these directions to the woman, the doctor returned, took him aside, and repeated his request that she should be well apprised of the danger, attending the use of the instrument, and cautioned him not to employ it, *unless he was sure.* Both the doctor and the defendant repeated their wish, that the instrument might not be used; but suffered the coloured woman to carry it away. In the morning, she brought it back, declaring it had not been made use of, and she had left the young person, in great distress, at its failure.

Dr. Dixon deposed that the instrument,

described to him, as that furnished to the defendant, is not such a one as could be used to produce an abortion. The instrument described is a flexible catheter. He does not know whether there be *any* instrument proper to produce an abortion. He does not know that a flexible catheter could produce it; its use is to draw urine from the bladder.

Several witnesses deposed to the defendant's good character. Others were offered to testify that, *in their opinion*, the defendant continued to be a proper person to fill his office; but we were of opinion the latter witnesses could not be heard.

In the determination of this case, the first question, which is to be solved, is one of fact. Did the defendant procure the means of producing an abortion?

In our search for the truth, we surely do no injury to the accused, if we first attempt to elicit it, out of his own deposition, which the indulgence of the prosecutor for the state, has permitted him to avail himself of.

He begins by informing us he communicated to the doctor, a letter from the reputed father of the child, mentioning that "if *any thing* could be procured from a doctor, or if

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the young person could be delivered, without the knowledge of the mother, all would yet go well;" he then enquired "whether any kind of medicine, no matter how simple, giving it a high sounding name, could not be had to content the parties, give time and get them off."

There is a vast difference between what is called for in the letter, and what the doctor was apparently desired to furnish—the letter called for something that might have the same effect as a secret delivery—so that all things might yet go well—evidently the means of an abortion. The doctor was called upon for some *simple* (we conclude *harmless*) medicine, by which the parties might be *amused*.

It is clear, however, the doctor understood the defendant was in search of the means of producing an abortion, not of a simple medicine, with a high sounding name. For, after having at first declared his intention not to comply, he promised to think about it. If he had understood that a harmless potion, made apparently potent, by giving it colour and odour, was all that was expected, there could have been no ground for hesitation or caution. When he afterwards intimated a change of

disposition, he laid before the defendant the great risk he ran in acceding to his proposal, and required a large sum, twenty thousand dollars, as a compensation for that risk. Now had it not been the intention of the defendant, to be understood, in the sense, in which he evidently was, would he not immediately have said his meaning had been mistaken, and he had proposed nothing dangerous, because he had proposed nothing criminal. His reply shews his impression, that he had been understood in the sense in which he wished to be; that which he wanted was not a *simple* medicine, with a *high sounding* name; but a *very potent* one, that might produce the like effect, as the secret delivery of the woman, i. e. the means of producing the abortion. He admits the danger attending a compliance with his request, and only complains that the chances of this danger have not been correctly calculated and induces the doctor to reduce the sum, by which he expected it to be compensated, to one fourth.

The deposition next shews that these arrangements being made, the defendant informed his employer of his success—adding that the compensation being secured "the things

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would be furnished?" What things? The *simple* medicine, with a *high sounding name*? No: *things* which take effect, if not immediately, at least within twenty four hours. What effect? That of which his employer spoke, in his letter, communicated to the doctor, i. e. the things would go as well, as if the young person was delivered, without the knowledge of her mother.

The compensation being secured by a note of $5000, the deposition states, the doctor furnished the thing asked; not a simple medicine, with a high sounding name, but the means of producing the abortion—an instrument of *death*.

It is true the deposition states there was no intention, either in the defendant, or in the doctor, that it should be employed. Yet, the defendant swears he received it from the doctor, in order to deliver it to the coloured woman, with directions to be communicated to her as to the manner of using it. He was charged to inform her of the danger, the mother of the child would run of losing her life. With these directions and this caution, she received an injunction, (and a solemn promise was exacted from her) not to use it. Could she think

the defendant seriously expected her attention to this injunction, when it was accompanied with the delivery of the instrument, and she was instructed how to use it, in such a manner as not to endanger the mother's life.

Attending more, as we are bound to do, to what the defendant *did*, than what he *said*, his deposition is alone sufficient to convict him; and the court may well tell him *ex ore tuo, te judico.*

The doctor's deposition, however, places the affair, in a stronger light. He told the defendant he would *indicate* the means. The reply was this would suffice, as the coloured woman would be employed to use them. The doctor added the person who would use the means he was about to indicate, would commit *murder*—and he ran such a danger, by the mere indication of them, that should his agency become known, he could find no safety but in flight—that therefore the means would not be indicated, until several thousand dollars were secured, as his compensation for this risk, and five hundred dollars provided, to enable him to fly. Surely, when, after this, the defendant proceeded to make arrangements for securing the large sum, and providing the

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lesser, in case of necessity, his conduct precludes the idea, he believed that none but *innocent* means were to be indicated.

It is true that if implicit credit be given to the testimony of the coloured woman, and to the solemn and repeated asseverations of the defendant's determination of using no means, tending to the destruction, which she places in the defendant's mouth, we might perhaps arrive at a different conclusion. But admitting these asseverations were made, the defendant's *actions* contradict his *words*, and the means he resorted to, evidently denote quite a different determination, than that which is so forcibly and so frequently asserted.

She avers the defendant did not give her any instruction, as to the mode of using the instrument, until the morning, when she brought it back. But, he swears expressly he gave the directions, in the evening, when he placed the instrument in her hands.

Upon the whole, we are of opinion that the testimony establishes, beyond doubt, the fact that the defendant did procure the means of producing an abortion.

The question of fact being thus disposed of, that of law remains to be solved.

"The clerks of the several courts of this state shall be removable for *breach of good behaviour.*" *Const.*

That the fact charged and proved, constitutes a breach of good behaviour, is so obvious a proposition, that we cannot seriously adduce any argument, in support of it. Whether such a breach of good behaviour, be one of those for which a clerk ought to be removed, is a question, which it is now our duty to examine.

It is certainly true that *every* breach of good behaviour, does not require, or even authorise the removal of a clerk. Every *indictable* offence (being the commission of an act, forbidden by law,) is a breach of good behaviour. As no words, however abusive, justify a battery, it follows that a clerk who would knock down a person, who gave him gross verbal abuse, would be guilty of an indictable offence, and consequently of a breach of good behavour. Yet no one would say such a breach would authorise his removal. The reason is that, although no man ought to be allowed, in civil society, to avenge his own wrongs, few men have, at all times, such a command over their passions, as patiently to bear gross abuse,

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until the tardy march of justice overtake the wrongdoer, and if the citizens, who have no such extraordinary patience, were to be excluded from office, the circle, within which a choice is to be made, would be alarmingly lessened.

It is also clear that the breach of behaviour, for which a clerk is to be removed, needs not to be a breach of *official* good behaviour, i. e. *a misdemeanor in* OFFICE; because such misdemeanors are enunciatively mentioned in the constitution, as the grounds of removal of *all* civil officers, except clerks, and the use of a more comprehensive expression as to them, *a breach of good behaviour*, is evidence of an intention of enlarging the circle.

We conclude that the expressions, under consideration, cannot be confined to *official* or *legal* misdemeanors. A gross breach of *moral* good behaviour, (unequivocally evincing an absolute dereliction of principles, the extinction of the moral sense or the absence of that integrity of mind, without which one cannot hope to enjoy public confidence,) satisfies the words of the constitution.

We even think that an act, positively authorised by law, might constitute such a mis-

behaviour, as would call for the removal of certain officers. In the city of New-Orleans, a certain number of gaming houses are *licensed*, under an act of the state legislature. Individuals may, by the purchase of a license for this purpose, at the treasury, acquire the right of keeping such a house. Yet the exercise of this right could not be attended with impunity in a judge. Suitors would feel alarmed and insecure, in seeing him pass from the nightly orgies of a gaming table, into the very sanctuary of the justice of his country; and there can be no doubt that those, whose duty, it would be to calm these alarms, would not long hesitate in concluding that his conduct was such a breach of good behaviour, as loudly demanded his removal from office.

We are aware we give a very great latitude to our discretion; but we are unable to see how it could safely be narrowed. If clerks are removable for causes, which the constitution has not clearly defined, and left vague and uncertain, they are not placed in a worse situation, than the other civil officers of the state, except the governor, who is removable for a misdemeanor in office, only. The judges are removable for a *reasonable* cause. All

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other officers are so, at the discretion of two thirds of both houses of the legislature, who are not bound to give any reason for the removal.

The constitution has provided for the security and independence of clerks, in the elevated tribunal, to whom alone they are amenable; in the number of its members, sufficiently large to afford protection against private animosity and pique—not sufficiently so to check responsibility—in the obligation imposed on them, to adduce the reasons that direct their judgment,—in the publicity of the trial and the liability of the judges, to be, in their turn, judged.

Having examined the question in a general point of view, we now approach it on the particular.

An incest was committed; the parties sought by the destruction of the fruit of their criminal intercourse, the removal of the evidence of it from the eye of the officers of justice and the public. A *moral* murder was intended. The defendant, an important officer of the court, before whom they were amenable, undertook to provide the means of carrying the nefarious deed into execution; he induced by

the temptation of lucre, a medical man to forget what he owed to his profession, his country, and his God,—to furnish the deadly weapon—to instruct him in the use of it. He gave this weapon, and the instructions he had received to the person, who had been employed, as the immediate agent, in the destruction of the child.

If, after this, the seducer be brought to the bar, will not the bye-standers shudder, when they hear the defendant arraign him? Considering the important part the defendant must take in the trial, what hope, what security can there be for his impartial conduct? If suspicion will have once been excited, when will it subside?

All those who minister, in the temple of justice, from the highest to the lowest, should be above reproach or suspicion. None should serve at its altar, whose conduct is at variance, with his obligations. Surely he, who can give his aid and sympathy, to screen offenders, should not be trusted to take any agency in their prosecution.

It is therefore ordered, adjudged and decreed, that the defendant be removed from the office of clerk of the district court, for the

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parish of St. Landry—that he pay the costs of the prosecution; and that the clerk of this court, transmit a copy of this judgment, to the judge of the fifth district.

Lesassier for the state, *Brownson* for the defendant.*

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1 If it be accepted on the promise of a mortgage, which is afterwards executed, on the mortgagor's failure, the time of the promise will be considered, on an application to set the mortgage aside. *Wyer's syndics* vs. *Sweet & al.* 588

2 Notice of protest is necessary to charge the drawer, altho' the bill was given in discharge of a debt. *Penn* vs. *Poumeirat.* 541

3 And this whether the parties be merchants or not. *Same case.* *id.*

4 A promise to pay the bill, if duly protested, does not bind to pay it, if afterwards protested. *Same case.* *id.*

5 Parole evidence is admissible to prove an agreement, between the parties to a bill, that it should be negociated. *Robertson* vs. *Nott.* 122

BOND.

1 A party, who subscribes one in blank, is bound by what is afterwards written. *Breedlove & al.* vs. *Johnson.* 517

2 No action lies on a bond to obtain an injunction, which is afterwards dissolved by consent. *Same case.* *id.*

3 The landlord's lien is of a higher nature, than the claim of the U. S. or a custom-house bond. *Jackson* vs. *Oddie.* 555

4 An injured party may bring suit on a marshall's bond, in his own name. *Hernandez & al.* vs. *Montgomery.* 422

5 It is a breach of such a bond not to have the proceeds of a sale ready in court. *Same case.* *id.*

See APPEAL 3, 29, 30 BAIL.

CARRIER.

If the master of a steam-boat fail to deliver goods shipped, he is responsible for the invoice price. *Lafon's ex'x.* vs. *Phillips & al.* 225

CLERK.

1 The assistance of the attorney-general is not necessary in the prosecution for the removal of a clerk. *State* vs. *Winthrop.* 527

2 Frequent intemperance and habitual indolence, is too general a charge, in such a case, and evidence cannot be received to support it. *Same case.* *id.*

3 A clerk will not be removed, for having acted incautiously, if he thereby have occasioned injury to no one. *Same case.* *id.*

4 But he will be, if he procures the means of producing an abortion. *State* vs. *Bell.* 683

CONTRACT.

1 In a synagmatical one, the dissolving condition is always included. *Turner* vs. *Collins.* 605

2 But, it must be sued for, and a delay may be granted to the defendant, according to circumstances. *Same case.* *id.*

COURT OF PROBATES.

1 If the property of a succession be illegally sold, the action of warranty arising on it cannot be brought in the court of probates. *Montamat and wife* vs. *Debon.* 392

2. The purchaser of property, at a sale of the court of probates, acquires it free from incumbrances. *De Ende* vs. *Moore.* 336

3 Same point. *Lafon's ex'x.* vs. *Phillips & al.* 225

4 Any irregularity in the sale, must be complained of, be-

fore the homologation of the curator's accounts. *Same case.* 225

5 Claims against vacant estates are exclusively cognizable in the court of probates. *Miles* vs. *Ford & al.* 439

See MORTGAGE 2.

CONVEYANCE.

1 That which gives all a debtor's property to one creditor, who has no legal preference, is fraudulent in both. *Hodge* vs. *Morgan.* 61

2 If it be attacked as such, it lies on the alienee to shew there was other property. *Same case.* *id.*

CORPORATION.

It is suable only, by the name given it in its charter. *Hill* vs. *Tessier.* 539

CREDITOR.

He may use all legal means against his debtor in solido. *Maxwell & al.* vs. [illegible] 140

EVIDENCE.

1 Vouchers filed by an executor, in support of his accounts are *prima facie* evidence of their correctness. *Casanovichi & al.* vs. *Debon & al.* 596

2 Allegation, that a slave was a thief, authorises evidence that he was in the habit of stealing. *Chretien* vs. *Theard.* 582

3 The acknowledgment of a syndic that a counsel was employed by the insolvent, is not evidence of an agreement to pay him. *Seghers* vs. *Moulon's syndics.* 608

4 In a suit for rescinding the sale of a slave, on an allegation of the habit of running away, the deed of sale of the

defendant's vendor is evidence for the plaintiff. *Carian* vs. *Rieffel*. 622

5 Evidence of the slave running away before the sale, may, with other circumstances, establish the habit. *Same case*. *id.*

6 Parole evidence may be received, when part of the written was lost or destroyed. *Morgan* vs. *Bickle & al.* 377

7 A plaintiff, who sues as guardian, needs not to prove his capacity, on the plea of the general issue. *Harper* vs. *Destrehan*. 389

8 The certificate of a commissioner, that a deposition was taken in his presence, is evidence that every thing appearing on it, was done in his presence. *Bowman* vs. *Flowers*. 267

9 The party objecting to evidence must, at the trial, state the particular ground of his objection. *Same case*. *id.*

10 Evidence which is immaterial cannot be received. *Gravier* vs. *Pitot & al.* 566

11 Declarations of the vendor, out of the presence of the vendee, may be received against the latter. *Guidry* vs. *Grigot*. 13

12 But they are no evidence of fraud in the latter. *Same case*. *id.*

13 It is not a good objection to evidence, that it does not at once establish the fact it is introduced to prove. *Same case*. *id.*

14 The record of a suit, in which judgment was rendered for an intervening creditor, is sufficient evidence of the latter's claim. *Hodge* vs. *Morgan*. 61

15 Proof of the line in dispute being the real boundary of the younger tract (purporting to be bounded by the older) is strong presumptive evidence of its being the boundary line of the former. *Sterling's heirs* vs. *Johnson*. 289

16 The mention in a judgment discharging a debtor, that he took the oath required by law, is evidence of that fact. *Brainard* vs. *Francis.* 150

17 An allegation that the plaintiff is owner, authorises evidence of possession. *Layton* vs. *Menard's syndics.* 515

18 Merchant's books are not evidence against other merchants, of the sale and delivery of articles there charged. *Johnson's syndics* vs. *Breedlove & al.* 518

19 A wife, claiming as her husband's legatee, cannot shew, by parol evidence, the simulation of a sale. *Guidry* vs. *Grivot.* 13

20 A party may be compelled to produce his books of account. *Godel* vs. *M'Lanahan.* 435

21 The rules of the district court must be shewn to the supreme court, as other matters of fact. *Bowman* vs. *Flowers.* 268

EXECUTION.

1 A *fi' fa'* may be levied on money, directed by the legislature to be paid to the defendant. *Flowers* vs. *Livingston.* 618

2 And the defendant cannot urge that it is in the constructive possession of a third person. *Same case.* *id.*

3 The defendant on a *fi' fa'* may purchase the plaintiff's note, and suspend the execution of the writ, till his right to set off the amount of the note, be enquired into. *Caldwell* vs. *Davis.* 135

See AGENT 5.

EXECUTOR.

1 He is suable, before all the property be administered. *Herman* vs. *Flood.* 659

2 But the judgment ought not to be absolute, but that he pay in the course of administration. *Same case.* *id.*

3 When he sues on a cause of action, that did not exist in the testator, he needs not to sue as executor. *Butler* vs. *Kenner & al.* 274

4 An executor residing abroad, cannot resist the just claim of legatees here. *Hepp & al.* vs. *Lafontx's ex's.* 446

See EVIDENCE 1.

EXPERTS.

1 A report of experts cannot be objected to, because they swore, after it was reduced to writing. *Nott* vs. *Daunoy & al.* 1

2 Nor because the oath was administered by a justice of the peace. *Same case.* *id.*

3 Altho' there be but one tract to be divided, they ought to make an inventory and appraisement of the several buildings on it. *Same case.* *id.*

FACTOR.

1 A factor, who sold at 60 days, cannot avert the consequence of his neglect to demand payment, by showing that it was his practice not to call upon his customers, till the amount due was sufficient to demand a note, and then take it at 60 days. *Gilly & al.* vs. *Logan & al.* 196

2 If he purchase goods for his principal and promises to ship them, he cannot afterwards renounce the bargain. *Same case.* *id.*

3 If at the expiration of the credit given, he takes a note to himself payable on a future day, he makes the debt his own. *Hosmer* vs. *Beebe.* 367

FEES.

Those of a parish judge, in selling the property of a succession are those fixed by the act of 1813. *Tessier* vs. *Silley & al.* 85

HEIR.

1 The heir, who fails to make a correct inventory, loses his right as a beneficiary one. *Le Cesne* vs. *Cottin.* 475

2 He may make it before or after his acceptance, or he may accept under an inventory made by another. *Same case.* *id.*

3 The courts here do not lose their jurisdiction in a suit, by the death of the defendant, and the opening of his succession abroad. *Same case.* *id.*

4 An heir is only a creditor for his part of a debt, and cannot control that of his co-heir. *Kilgour* vs. *Ratcliff's heirs.* 292

5 He cannot secure the object due, if it be not subject to a corporeal division. *Same case.* *id.*

6 He who takes the quality of an heir, accepts the succession absolutely. *Bingey* vs. *Cox.* 473

7 Whether a foreigner can be admitted as a beneficiary heir? *Le Cesne* vs. *Cotten.* 475

HIGHWAY.

A suit may be maintained by an individual, in the district court for an obstruction of a highway. *Allard & al.* vs. *Lobau.* 317

HUSBAND & WIFE.

1 The matrimonial rights of a wife, who marries with the intention of an instant removal, into another country, will be governed by its laws. *Ford's curator* vs. *Ford.*

2 The want of the record of the marriage contract cannot be objected by the husband's representative. *Same case.* *id.*

3 Where they have different domicils, they have presumed to have submitted themselves to the law of that of the husband. *Same case.* *id.*

4 The wife may bind herself with her husband, renouncing certain laws. *Banks* vs. *Trudeau.* 39

5 The creditor then is not bound to shew she derived any benefit. *Same case.* *id.*

6 But she cannot bind herself as his surety. *Same case.* *id.*

See EVIDENCE 19.

INSOLVENT.

1 Any of the creditors may compel a syndic to produce his bank book. *Bargebur & al. vs. their creditors.* 520

2 If he make a promise to his creditors to pay them, if he comes to better fortune, and dies, leaving sufficient property to pay three-fourths of his debts, a release of any creditor will not enure to the others, but to the debtor's heirs. *Le Changeur* vs. *Gravier's heirs.* 545

3 The Spanish insolvent laws were not repealed by the adoption of the constitution of the U. S. *Ray & al.* vs. *Cannon & al.* 26

4 The act of 1817 has not repealed the former laws relative to a voluntary surrender. *Kelsey* vs. *his creditors.* 36

5 It introduces a cumulative remedy, from which certain insolvents are excluded. *Same case.* *id.*

6 That the election was not legally made, because the persons who voted were not creditors, to the amount stated, nor had any claim, is too general a ground of opposition to the homologation of the proceedings. *Bierra* vs. *his creditors.* 47

7 The ten days allowed for filing an opposition to the appointment of a syndic, run from the close of the proceedings before the notary. *Dreux* vs. *his creditors.* 57

8 The testimony of an insolvent cannot be received in a suit between a creditor and the syndic. *Seghers* vs. *Moulon's syndics.* 608

9 He cannot employ counsel, after his failure, at the costs of the estate. *Same case.* *id.*

10 Syndics have not the right of receiving the whole proceeds from the sale of a chattel, of which the insolvent was a part owner only. *Canez & al.* vs. *Schw. James M'Kinlay.* 307

11 Fraud is presumed on a insolvent. *Brandt & al.* vs. *Shaumburgh.* 329

12 A creditor may oppose the election of a syndic, not a creditor. *Clamageran* vs. *Degruy.* 156

See EVIDENCE 3.

INSURANCE.

1 The insured may, in all cases, abandon, as for a total loss, when the thing insured has been injured, to the half of its value. *Hyde & al.* vs. *La. State Ins. Co.* 410

2 Whether the insured may abandon, when there has not been a total-loss, in case the insurer will not undertake to repair the vessel? Quere. *Same case.* *id.*

3 But the insurer cannot claim this right, if he abandon, without calling on the insurer to repair. *Same case.* *id.*

4 If a ship become unnavigable, from age or rottenness, the insurer is not responsible. *Same case.* *id.*

5 If the injury she has sustained be such, that her unsound and decayed parts cannot be used, as before the accident, without repairs equal to half the value, the insured may abandon. *Same case.* *id.*

6 But, if the repairs of the injury, arising from one of the risks insured against, will replace her in her former situation, no matter how unsound, the insured cannot abandon. *Same case.* *id.*

7 Insurance may be made on freight to be carried. *Cole* vs. *La. Insurance Company.* 165

INDIAN.

The issue of a female Indian is free. *Ulzere & al.* vs. *Poeyfarre.* 504

INTEREST.

1 Is included in the legacy of a debt. *Hepp & al.* vs. *Lafonta's ex's.* 446

2 If interest be promised to be paid on a privileged debt, the interest is not privileged. *Roman* vs. *D'Auterive.* 116

INTERROGATORIES.

1 If a party files his, under his opponent's, he cannot at the trial object that they are leading ones. *Sowers* vs. *Flowers and al.* 617

2 Nothing requires the defendant's answer to the plaintiff's interrogatories, to be included in the answer to the petition. *Seat* vs. *Erwin & al.* 245

3 A fact, added by a party, answering interrogatories, is not to be struck off because not called for. *Maxwell & al.* vs. *Gunn.* 140

4 An evasive answer creates a violent presumption that a direct one would be against the interest of him, who is interrogated. *Barrow* vs. *Sterling.* 55

JURY.

Part of the facts of a case may be submitted to a jury. *Morris* vs. *Hatch.* 492

See APPEAL 5, 11—15, 24, ARRAY.

JUSTICE OF THE PEACE.

Is not answerable *civiliter*, for a wrong judgment. *Dressen* vs. *Cox.* 631

See EXPERTS 2, PRACTICE 11.

LEASE.

1 The lessee may be expelled, if he does not pay the rent. *Dressen* vs. *Cox.* 631

2 He may be held to bail, although his furniture be seized. *Same case.* 631

3 On an authentic one, the landlord may obtain an order of seizure and sale, *in limine litis*. *Sterrett* vs. *Smith*. 450

4 On a lease for years, if the tenant quit the premises, the landlord may demand the rent, for the whole term. *Christy* vs. *Casanave*. 451

5 A lease at will is determined by a tender of the keys after legal notice. *Chalmers & al.* vs. *Vignaud's syndics*. 189

LEVEES.

1 Must be repaired, according to the regulations of the police jury. *Boudigny* vs. *Dormenon & al.* 455

2 But these have no force, till they be promulgated. *Same case.* *id.*

MANDAMUS.

The writ of, will not be granted to correct mere errors in form. *Lafon's ex's.* vs. *Lafon*. 571

MINOR.

1 He may consider an illegal sale of his property, by his guardian, as a convertion, and claim the price wtth interest. *Chesneau* vs. *Girod*. 612

2 A minor above the age of puberty, must be assisted by his curator. *Gassiot* vs. *Giquel*. 218

3 If he be not, the circumstance may, on the appeal, be assigned as an error, apponent on the face of the record. *Same case.* *id.*

4 When the forms of law have been pursued, in the alienation of a minor's estate, he is considered as having made it, being of full age. *Agaisse & al.* vs. *Gendron & al.* 73

5 If a person of age bring suit for a minor, without authority, he will be decreed to pay costs. *Gaziot* vs. *Giequel*. 216

6 The circumstance of a minor's estate being already in the hands of a tutor, could not prevent the legislature from directing it to be administered in a new way. *Aguisse & al.* vs. *Gendron & al.* 73

7 No law requires that in the inventory of a minor's estate the property coming from his father should be distinguished from that coming from his mother. *Same case.* *id.*

8 Nor will the court set aside a sale of his property, because such a distinction was omitted. *Same case.* *id.*

9 If a sale of minor's estate be sought to be set aside on account of lesion, by a *restitutio in integrum*, the circumstance that some time after the sale, it was sold by the vendee, for a greater price than he give, will not authorise the restitution. *Same case.* *id.*

10 Particularly, if he gave the appraised price. *Same case.* *id.*

MORTGAGE.

1 When the deed of, has a clause *de non alienando*, the premises may be sold, at once, in the hands of the vendee. *Nathan & al.* vs. *Lee.* 32

2 But this clause does not prevent a sale, by the court of probates. *De Ende* vs. *Moore.* 336

3 The mortgagee has a right to require the syndics should sell for cash. *Ascinalli* vs. *Menard's syndics.* 222

4 It suffices that the mortgage be recorded, before the cession, to be binding on the creditors. *Same case.* *id.*

5 Where the premises have passed into the hands of a third person, the creditor is driven to the action of mortgage. *Layton,s syndics* vs. *Menard.* 515

6 The mortgagee's right under *pact de non alienando* is not repealed by the civil code. *Nathan & al.* vs. *Lee.* 32

7 A mortgage does not prevent the vendor and mortgager from pursuing his right, altho' it enables the mortgagee to disturb the vendee. *Wyer* vs. *Winchester.* 69

NOVATION.

If the creditor give a receipt for a note, in payment of his account, this creates a novation of the debt. *Barron & al.* vs. *How.* 144

OVERSEER.

1 If the defendant promised to deliver to the plaintiff, his overseer, a quantity of provisions for him and family, he cannot withhold them till the end of the year. *Seal* vs. *Erwin & al.* 245

2 It is not a fatal objection to the petition, in which they are claimed in money, that their value is not stated. *Same case.* *id.*

3 If A. propose to B. to take charge of his plantation for a fixed allowance, B's going and taking charge of it, is evidence of his assent. *Same case.* *id.*

PARISH JUDGE.

He is not answerable for error in judgment. *Bouligny* vs. *Dormenon & al.* 455

See FEES.

PLEDGE.

The creditor may be compelled to sell the. *Williams & al.* vs. *Schr. St. Stephens.* 22

PARTNER.

1 Endorsing a note due to the firm, after his co-partner's death, transfers all his own interest. *Jones & al.* vs. *Thorn.* 463

2 In a joint speculation, the partner who acts, ought to take the necessary steps to secure payment, or give notes to the person interested with him of the danger of the loss. *Barron & al.* vs. *Blanchard.* 662

3 Otherwise he will be liable to indemnify him. *Same case.* *id.*

4 The expenses of a partner, in prison bounds, for a debt of the firm, are to be borne by it. *Day & al.* vs. *Morte.* 90

5 An injunction improperly sued out against a partner, authorises a suit for damages by the firm. *Mitchel & al.* vs. *Gervais.* 568

6 A surviving partner, being a joint tenant, may resist alone a tortious sale. *Wyer* vs. *Winchester.* 69

POWER.

A power to institute a suit, and prosecute to a final judgment, does not include that of making a compromise, or of receiving the money recovered. *Kilgour* vs. *Ratcliff's heirs.* 292

PRACTICE.

1 Jurisdiction once obtained cannot be divested or suspended by any act of the parties, *pendente lite.* *Freeland* vs. *Lanfear.* 257

2 And the rule applies to all the incidents of the cause. *Same case.* *id.*

3 If satisfaction be improperly entered, the legal remedy is by a suit in the ordinary way. *Kilgour & al.* vs. *Ratcliff's heirs.* 292

4 All regulations made under pretence of public good, which interfere with the rights of individuals, should be strictly pursued. *Boudigny* vs. *Dormenon & al.* 455

5 The defendant is entitled to oyer of the instrument sued on. *Maxwell* vs. *Walker & al.* 211

6 Even, when he has not answered, within ten days, if no judgment has been taken by default. *Same case.* *id.*

7 When a party submits certain points on questions of law to the court, the admission of the facts on which they are granted is implied. *Golis* vs. *his creditors.* 108

8 When the parties agree on certain facts and submit others to the jury, the court is to pronounce judgment on the whole, after the contested facts are found by the jury. *Same case.* *id.*

9 The district court cannot proceed in a suit, after the defendant has obtained a stay from the parish court. *Hummin* vs. *Jones.* 163

10 The plaintiff needs not support his petition by his oath. *Bingey* vs. *Cox.* 473

11 The case of a justice of the peace sued for malfeasance in office, forms no exception to the rule. *Same case.* *id.*

12 The district court does not lose jurisdiction of a cause before it, when the defendant dies, without leaving any property, in the reach of the court of probates. *Le Cene* vs. *Coltin.* 475

13 When the point of fact is doubtful, judgment is given against the party holding the affirmative. *Walton & al.* vs. *Grant & al.* 494

14 A party cannot on a partial set off enjoin the whole execution. *Palfrey* vs. *Shaff.* 51

15 Nor ought a court enjoin the execution of its own judgment, because the defendant has acquired claims against the plaintiff. *Same case.* *id.*

16 The want of an answer does not authorise the confirmation of a judgment by default, without evidence, when the debt is not liquidated. *Milne* vs. *Labo & al.* 83

17 The same latitude is not allowed, as at common law, to a party who sets forth his claim in the general forms of declaration on common law count. *Stroud* vs. *Beardslee.* 84

18 The act of 1804, regulating proceedings as law require

a consistency between the *allegata et probata*. *Same case.* 84

19 One suit may be brought on several causes of action, if the be not inconsistent. *Cross* vs. *Richardson.* 323

20 When a right is asserted on one ground and shewn on another, judgment will be given, according to the justice of the case. *Rodriguez* vs. *Morse.* 358

21 A judgment in a sister state, supports the plea of *res judicata*. *Mackee & al.* vs. *Cairnes & al.* 599

22 The plaintiff in his replication, cannot claim the benefit of a judgment, which is opposed to him on an exception. *Same case.* *id.*

23 In suits in which there are several defendants, they must all appear and answer, in the parish in which the land lies, altho' neither reside there. *Davenport's heirs* vs. *Fortier & al.* 374

24. An amended petition need be served but must be answered, or judgment will be taken by default. *Freeland* vs. *Lanfear.* 257

25 If a debtor deny a debt, which he afterwards admits, he shall pay costs, although the judgment authorise how to withhold payment untill he receive security. *Harang* vs. *Le Breton.* 361

26 The decree of a court of competent jurisdiction, cannot be examined collaterally by the parties, or those who claim ender them. *Kilgour* vs. *Ratcliff's heirs.* 292

27 When the petition charges that the bond sued on, was taken, according to law, and it is set forth and made a part of it, the *reading* of it cannot be objected to, on an allegation that some of the formalities of the law were neglected. *Duchamp & al.* vs. *Nicholson.* 672

28 In whatever manner one may appear to have bound himself, he shall be bound. *Same case.* *id.*

See OVERSEER 2.

PRESCRIPTION.

1 Is not pleadable to an action for freedom. *Delphine* vs. *Deveze.* 650

2 It is interrupted, by an action, in which the plaintiff is non-suited. *Chretien* vs. *Theard.* 582

3 It does not run against him, who cannot sue. *Hernandez & al.* vs. *Montgomery.* 422

4 Actions to set aside contracts as fraudulent, must be brought within three years. *Weimprender's syndics* vs. *Weimprender.* 591

5 But when the debtor is insolvent, it needs not be commenced till after a settlement of the estate. *Same case.* id.

6 The prescription of three years, bars the claim of an attorney at law for his services. *Morse* vs. *Brand.* 515

7 Prescription does not begin to run, till the condition be accomplished. *Le Changeur* vs. *Gravier's heirs.* 545

PRISON BOUNDS.

A debtor in the, may avail himself of the act of 1808, in favour of debtors in *actual* custody. *Brainard* vs. *Francis.* 150

See PARTNER 4.

PRIVILEGE.

None is attached to the claim of a teacher, in an insolvent's school. *Labat* vs. *Labat's syndics.* 652

PROMISSORY NOTE.

1 The endorser of a note, given by the maker for the purchase of a slave, is by payment subrogated to the vender's rights. *Torregano* vs. *Segura's syndics.* 158

2 And he may demand the rescission of the sale, *Same case.* id.

3 If the petition does not shew notice to the endorser, the

judgment should not be final, but the plaintiff should be nonsuited. *Foster* vs. *Randolph.* 495

4 Payment of a note or bill, *supra protest*, cannot be made before protest. *Holland* vs. *Pierce.* 499

5 If payment be made before, although the note be afterwards protested, the endorser is not liable. *Same case.* *id.*

6 If the maker cannot be found, payment must be demandad at his domicil, if it be within the state. *Insurance co.* vs. *Shaumburgh.* 511

6 The payee, who has endorsed the note, cannot have any action on it, even for the use of the endorser. *Moore* vs. *Maxwell & al.* 249

8 In the description of a note, an error in the fractional part is fatal. *Pilie* vs. *Mollere.* 666

See PARTNER 1.

RECONVENTION.

Although an unliquidated demand cannot be pleaded in compensation, it may often be opposed by the way of reconvention. *Agasse & al.* vs. *Gendron & al.* 72

RESPITE.

1 The laws relating to respites, which were in force in Louisiana, before the adoption of the constitution of the U. S. are not repealed by that instrument. *Chalmers & al.* vs. *White & al.* 315

2 After a respite, the debtor cannot legally give any preference to a creditor. *Brandt & al. syndics* vs. *Shaumburgh.* 329

SALE.

1 Altho' the clause of warranty relates to a defect of title, it is not to be presumed that the parties to a sale, inten-

ded there should be no warranty as to redhibitory defects. *Castellano* vs. *Peillon.* 466

2 The vendor is affected by a judgment against the vendee. *Same case.* *id.*

3 A suit to set aside a sale is well brought against the party, who received the property. *Guidry* vs. *Grivot.* 13

4 If the vendee promise to pay the price to the vendor of his own vendor, he cannot delay the suit of the first vendor, till he obtain judgment against the second, on an alleged deficiency of quantity. *Desblieux* vs. *Derbonneaux.* 215

See EVIDENCE 4, 5, 11, 12.

SEQUESTRATION.

Sequestered property, when there is judgment of non-suit, is to be replaced, in the hands of him from whom it was taken. *Hasluck & al.* vs. *Morgan.* 9

SLANDER.

1 In an action of slander, it is sufficient to prove the substance of the words charged. *Freeland* vs. *Lanfear.* 257

2 But a charge of robbing the defendant of his tobacco, is not supported by evidence of its being dishonestly obtained. *Same case.* *id.*

SLAVE.

1 When the verdict finds that a slave, who has died, had the consumption, at the time of the sale, the disease may fairly be presumed to have been incurable. *Desdunes* vs. *Miller.* 53

2 If the owner of a slave remove him, from Kentucky, into Ohio, *animo morandi*, she becomes free *ipso facto*. *Lunsford* vs. *Coquillon.* 401

3 The *bona fide* vendee of a stolen slave, cannot compel the owner to restore his price. *Harper* vs. *Destrehan.* 389

SURETY.

1 An auctioneer's sureties are liable for goods sold by him & his partner. *Kuhn & al.* vs. *Abat & al.* 163

2 If a suit be brought against the principal and sureties and he fail in the mean while, judgment may be obtained against them. *Same case.* *id.*

3 The surety in a bond, in which it is stated that the principal has been appointed auctioneer, is estopped from denying that he was. *Duchamp & al.* vs. *Nicholson.* 672

4 The sureties of an auctioneer are bound for the payment of the amount of the goods sold, after the date of the bond, although they were delivered to him before. *Same case.* *id.*

UNITED STATES.

They have no lien for their debts, but a right of priority of payment, out of the funds in the hands of the representatives of their insolvent debtors. *Jackson* vs. *Oddie.* 555

WITNESS.

1 The vendee may offer the notary, who drew the sale, to prove that the vendor was in possession of an act, unwhich he claimed title to the slaves sold, and which was referred to in the sale. *Carian* vs. *Rieffel.* 619

2 The testimony of an insolvent cannot be received, in an action between a creditor and the syndics. *Seghers* vs. *Moulon's syndics.* 608

3 The deposition of a witness taken at a different time and place than those mentioned in the notice cannot be read. *Gilly & al.* vs. *Logan & al.* 196

4 Service of the interrogatories to be put to a witness does

not dispense with notice of the time and place of examination. *Bowman* vs. *Flowers.* 268

5 A district judge cannot be examined as a witness in his own court. *Ross & al.* vs. *Buhler & al.* 312

6 The criminality of a witness cannot be proved otherwise than by the record of his conviction. *Castellano* vs. *Peillon.* 466

See EVIDENCE 8, AGENT 1 & 2.

ERRATA.

Page	38	17th line from top	for comolative,	*read*,	cumulative,
	39	18	shares	-	slaves,
	41	17	granted	-	guided
	48	15	in	-	on
		16	as	-	nor
	50	5	of	-	on
	54	19	extend	-	intend
	65	6	knowing	-	know
	74	8	raise	-	receive
		21	provided	-	produced
	89	14	general	-	generally
	91	24	when	-	where
	93	21	amount	-	amounts
		22	affected	-	effected
	97	17	exciting	-	existing
	100	25	great	-	general
	105	20	three	-	their
	212	24	this country	-	the country
	232	11 & 13	authentication	-	authorization
	243	23	same	-	second
	254	14	no concern with	-	no concern
	300	16	we have it not	-	they have it not
	560	11	rent *en masse*	-	rent, or mesne
	568	19	petition	-	petitioner
	617	6	then	-	them
	621	23	favor	-	form
	651	26	enforcing	-	inferring